

COLLECTIVE COMPLAINT
European Youth Forum v. Belgium
12 May 2017

On Issues of unpaid internships in Belgium
Violation of Articles 4 and 7 of the Revised Social Charter

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I. EXECUTIVE SUMMARY

Young people entering the job market are in a precarious economic position. Across Europe, and in Belgium in particular, those who wish to enter into the professional world are faced with the de facto mandate that in order to gain experience and build the connections that will enable them to find paid professional work in the future, they must complete several internships.¹ Yet many of these internships are unpaid or underpaid, forcing some young people to rely on their savings or their parents and shutting others out of the process entirely.²

This Complaint asks the Committee to consider the legal situation for unpaid interns in Belgium in light of the European Social Charter and find that Belgium is not in conformity with the Charter. Specifically, the provisions in Belgian law that enable unpaid internships, and the lack of enforcement of provisions that aim to curtail them, violate Articles 4 and 7 of the Charter, which provide for fair remuneration and the protection of young people, respectively.

II. ADMISSIBILITY

A. The European Youth Forum's standing

1. The European Youth Forum (*hereinafter* "YFJ") is an international non-profit association registered in Belgium³ that has held participatory status with the Council of Europe since 2009.⁴ YFJ has had standing with the Revised European Social Charter (*hereinafter* "the Social Charter") collective complaint mechanism since 2014 and is entitled to submit collective complaints for the period 1 July 2014 – 30 June 2018.⁵ Under Part IV, Article D of the second additional protocol, international non-governmental organisations which have consultative status with the Council of Europe and are listed as having standing before the ESC/RESC mechanism have the right to submit collective complaints to the European Committee of Social Rights.
2. In addition, under Article 3 of the Additional Protocol of 1995, the international non-governmental organisations referred to in Article 1(b) may submit complaints with respect to those matters regarding which they have been recognised as having particular competence.⁶
3. YFJ is an umbrella of 103 youth organisations – National Youth Councils and International Youth NGOs – representing and advocating for the rights and interests of young people in Europe and those of their organisations. Since its establishment in 1996, YFJ has carried out numerous campaigns and

¹ European Youth Forum, "Interns Revealed", p. 27 ("80% [of post-studies interns] listed improving their CV and future job prospects as a motivation for taking up the internship."). http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/genericdocument/wcms_175791.pdf.

² European Youth Forum, "Interns Revealed", p. 29.

³ European Youth Forum, Statutes: http://www.youthforum.org/assets/2013/05/0010-14_European_Youth_Forum_statutes_ENG_FINAL_APRIL2014.pdf

⁴ Council of Europe, NGOs Database: <http://coe-ngo.org/#/ingo/56a682bd7f63c229362a2fbf>

⁵ Council of Europe, "International Non-Governmental Organisations (INGOs) entitled to submit collective complaints":

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806d4ba0>

⁶ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdad>

research studies and developed partnerships with various stakeholders to promote young people's rights. Youth employment is a long-standing priority of YFJ, and in this context YFJ actively promotes quality internships. Together with youth organisations, trade unions, members of the European Parliament and other civil society actors, YFJ developed the European Quality Charter on Internships and Apprenticeships (hereafter "Quality Charter"),⁷ which sets out the basic minimum standards internship providers should ensure. Over 40 employers, as well as 35 Members of the European Parliament, have signed the Quality Charter. In addition to the Quality Charter, YFJ worked with employers to develop an Employer's Guide to Quality Internships,⁸ which aims to support employers in implementing quality internships in accordance with the Quality Charter. In 2011, YFJ published the results of a survey of over 3.000 young people who were or had recently been interns,⁹ and a 2013 publication on quality jobs dealt with the topic of internships and apprenticeships.¹⁰ Furthermore, in cooperation with intern and youth organisations, YFJ organised the International Interns Day 2015, running activities that empowered young people to develop ideas to ensure quality internships and present them to decision-makers. YFJ continues to work on quality internships and quality jobs for young people.¹¹

B. Belgium's standing

1. Belgium ratified the Social Charter on 2 March 1996. The document entered into force on 1 May 2004.
2. Belgium ratified the additional protocol to the Social Charter providing for a system of collective complaints on 23 June 2003. This entered into force on 1 August 2003.
3. This complaint is submitted in writing under Article 4 of the Additional Protocol and relates to Articles 4 and 7 of the Social Charter. These provisions were accepted by the Respondent Government upon the ratification of the Social Charter.

III. SUBJECT MATTER OF THE COMPLAINT

This section will present the problems with unpaid internships and the statistics that provide evidence of these problems, followed by a discussion of the Belgian legislation that enables the practice of unpaid internships to take place.

A. The problem with unpaid internships

Missed opportunities

⁷ European Youth Forum, European Quality Charter on Internships and Apprenticeships: http://www.youthforum.org/assets/2014/04/internship_charter_EN.pdf

⁸ European Youth Forum, Employer's Guide to Quality Internships: <http://www.youthforum.org/assets/2015/03/Employers-Guide-Quality-internships1.pdf>

⁹ European Youth Forum, "Interns Revealed: a survey on internship quality in Europe": http://www.youthforum.org/assets/2013/11/YFJ_InternsRevealed_WEB.pdf

¹⁰ European Youth Forum, "Quality jobs for young people": https://issuu.com/yomag/docs/yfj_qualityjobs_en_issuu

¹¹ Further information on our work in these areas is available at www.youthforum.org/quality-internships/ and <http://www.youthforum.org/quality-jobs/>

1. Internships, also referred to as traineeships,¹² can provide young people with valuable work experience and exposure to different career paths and opportunities. For a young person who has only known school and perhaps some part-time, low-skilled work, an internship at an NGO, a bank, an art gallery or a government office is a way to learn how to comport oneself in an office environment, find and develop one's professional strengths, and build connections that lead to future employment. In fact, internships are increasingly becoming de facto necessary experiences for gaining full-time employment. Citing EOCED research, a European Commission study on traineeships reported that study-related work experience increases the chance of being employed after graduation by 44%.¹³ And there is wide consensus that internships are becoming a standard feature of young people's transition from education and training to the labour market as they have also become increasingly commonplace in EU member states.¹⁴ Given the huge demand for jobs at a time of economic uncertainty in Europe, many employers will not even grant interviews to young candidates unless they have extensive work experience.
2. Yet many young people are prevented from accessing such experience, and many others cannot benefit fully from the internships they have because so many internships are unpaid. For young people who do not come from families with the means to support them in paying for rent, food, and transport, an unpaid internship—which can last several months—is untenable. For those who may be able to find paid work in addition to their internships, the demands of working many more hours than their wealthier peers can take away from their ability to be fully present for the internship.
3. In a recent Eurobarometer survey,¹⁵ 59% of interns across the EU reported that their last internship was without any financial compensation. Belgium has the highest percentage of unpaid interns in the EU, with only 18% being paid for their services. Unpaid internships are especially inaccessible or even harmful to young job seekers because they are in especially precarious positions. According to the European Commission, youth unemployment rates are significantly higher than unemployment rates for all ages.¹⁶ Young people have been especially hit hard by the financial crisis of 2008, with youth unemployment rates spiking in the years following the crisis¹⁷ and the number of young people neither in employment nor in education or training reaching record highs.¹⁸ As of December 2016, the youth unemployment rate in Belgium was 20.4%.¹⁹ In many Member States, transitions from education to work have become increasingly longer, more unstable and uncertain.²⁰

¹² European Commission, The Experience of Traineeships in the EU, page 3.

¹³ http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf.

¹⁴ <http://ec.europa.eu/social/BlobServlet?docId=11348&langId=en>

¹⁵ <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2017578%202012%20ADD%201>, at pg. 11

¹⁶ http://ec.europa.eu/public_opinion/flash/fl_378_en.pdf

¹⁷ http://ec.europa.eu/eurostat/statistics-explained/index.php/Unemployment_statistics

¹⁸ *Id.*

¹⁹ http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_young_people_neither_in_employment_nor_in_education_or_training#Young_people_neither_in_employment_nor_in_education_or_training

²⁰ <https://www.statista.com/statistics/266228/youth-unemployment-rate-in-eu-countries/>

²¹ <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2017578%202012%20ADD%201>, at pg. 5

4. In 2017 the Flemish Youth Council VJR,²¹ which represents young people in Flanders and is the official advisory body of the Flemish Government on all matters concerning children and young people, conducted a survey on unpaid internships. The survey received 150 responses, and while the results may not be statistically representative, preliminary findings indicate some general trends: Flemish young people are increasingly considering undertaking an internship, particularly as they recognize the need to gain experience in order to enter the labour market. However the majority of respondents are against unpaid internships, with many indicating that they do not have the financial ability to work for free, or that the legal status of unpaid interns is uncertain.²²
5. With so many young people out of school and struggling to find employment, internships are critical to bridging the gap between the world of education and the world of work. Yet the widespread practice of unpaid internships effectively restricts access to gainful employment in certain sectors of the economy to only those privileged enough to be able to afford to undertake them. Additionally, interns are often recruited through closed networks rather than on the basis of merit. And the problems of cost and unfair recruitment are magnified in countries where jobs are concentrated in major cities. Young people from outside these metropolitan areas are additionally challenged with housing expenses and are less likely to have the social capital to find out about these internships opportunities in the first place.
6. Non-payment of interns results in discrimination against those young people who are unable to afford to work for several months without pay. Indeed, the European Ombudsman has recently called on a EU body, the European External Action Service, to pay all of its trainees under the principle of non-discrimination.²³ Further, there are indications of a gender 'pay gap' in internships with a larger proportion of women in unpaid or low paid positions.²⁴

Exploitation

1. It is crucial that internships provide a quality learning experience and do not consist of merely doing photocopying and getting coffee. YFJ, along with other civil society organizations and 31 MEPs published a *Quality Charter on Internships and Apprenticeships*.²⁵ The Charter underlines that internships should be primarily a learning experience and should not replace jobs; that a traineeship should be based on a written contract and should be limited in time; that a mentor/supervisor should provide guidance throughout the traineeship; that the trainee should receive reimbursement of costs or should have the right to receive food, housing, and public transportation tickets instead; that decent remuneration should be provided for work carried out additional to the requirements outlined in the contract; and that clear evaluation criteria of the traineeship period is needed.

²¹ <https://vlaamsejeugdraad.be/>

²² Policy Paper on unpaid internships, Flemish Youth Council – forthcoming (June 2017)

²³ <https://www.ombudsman.europa.eu/cases/recommendation.faces/en/76079/html.bookmark>

²⁴ <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2017578%202012%20ADD%201>, at pg. 17

²⁵ <http://www.youthforum.org/assets/2013/10/0595->

[10 European Quality Charter Internships Apprenticeships FINAL.pdf](#)

2. Yet many internships fall well short of these standards. The European Commission has estimated that under certain assumptions, approximately 50% of unpaid internships lack satisfactory learning content.²⁶ and organizations are increasingly relying on unpaid interns to fill roles that might otherwise be entry-level jobs.²⁷ That unpaid interns make up significant parts of some organisations' workforces, and those organisations could not function without them, suggests that interns are being exploited as free labour.²⁸ The European Commission's Traineeship Study found that using internships as free labour is a growing phenomenon, and the risk of substituting regular employment with internships is greater in Member States with high unemployment and/or unfavourable labour market conditions for young people.²⁹
3. Additionally, young people are not only more likely to be unemployed but they are also hit harder by the effects of short-term unemployment. Without work experience on a CV, it becomes that much more difficult to break into the job market. Thus, young people unable to find permanent jobs are "scarred" by short-term unemployment that can have a long-term effect on their lifetime earnings, representing a huge economic cost in lost potential.

B. Relevant Belgian legislation

1. The Belgian government has issued legislation on internships specifically. The current framework describes several types of internships and covers many forms of volunteer work, the most relevant being:
 - a. *Statut d'élève stagiaire* – hereinafter, student intern status
 - b. *Convention d'immersion professionnelle* – hereinafter, professional immersion agreement
 - c. *Stages pour les étudiants de l'enseignement supérieur* – hereinafter, internships for students in higher education
 - d. Residual category *Stage bénévolat* – hereinafter, unpaid internship
2. A comprehensive 2005 law currently governs all volunteer work.³⁰ To qualify as volunteer work within the meaning of the law, an activity must be uncompensated, uncoerced, and intended to benefit nonprofit entities or society at large. Finally, work performed in the context of a voluntary internship cannot be performed by or for an organization as part of an employment or service contract. An employee may perform volunteer work in the course of his regular professional activities, but may not receive compensation for the services (Art. 3).
3. Furthermore, organizations employing volunteers must fulfill certain obligations. They are required by law to inform volunteer workers about working conditions and the objectives of the work, insurance arrangements, and allowances for certain expenses. Finally, the organization is liable for any

²⁶ <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2017578%202012%20ADD%201>, at pg. 23

²⁷ Nolan, Aiofe. The human rights sector must stop exploiting unpaid interns. <http://theconversation.com/the-human-rights-sector-must-stop-exploiting-unpaid-interns-34994>

²⁸ <http://www.politico.eu/article/watchdog-tells-eu-diplomatic-corps-to-pay-interns/>

²⁹ <http://register.consilium.europa.eu/doc/srv?!=EN&f=ST%2017578%202012%20ADD%201>, at pg. 17

³⁰ http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005070359&table_name=loi

acts committed by the volunteer (Art. 4). Specifically, organizations employing volunteer workers may bear the costs of certain expenses incurred in the course of the work, up to an amount prescribed by law. The current limit is fixed at 991.57 euros per year. Though any such allowance does not disqualify certain work from counting as voluntary, if unjustified expenses exceed these limits, the Belgian government will not consider the post to be volunteer work.

4. The complaint will focus on unpaid internships, which are unpaid placements undertaken outside of secondary or post-secondary education (although certain expenses incurred by the intern may be covered by the employer / *responsable de stage*). While the other internship categories are governed by specific legislative frameworks, the unpaid internship is not an official legal category but has evolved through hiring practices in the sector. According to YFJ, many unpaid internships should actually be classified as either professional immersion internships or paid contractual positions.
5. In contrast to unpaid internships, professional immersion internships (*convention d'immersion professionnelle*) are paid. Under the latter scheme, any NGO hiring a person over the age of 21 should provide an allowance of minimum €751 a month. The contract must clearly specify the objectives of the internship as well as the tasks to be carried out by the trainee. Additionally, the NGO should obtain prior permission by "Bruxelles Formation," the public body officially responsible for professional training of French-speakers in the Brussels region, before offering the internships. If these conditions are not respected, the internship contract could be reclassified as an employment contract, according to which the €1.500 gross minimum wage would be applicable. In short, the Belgian government regulates professional immersion positions. Public employment agencies, such as Actiris in the Brussels-Capital region, or VDAB in Flanders, closely monitor the placement of interns and ensure that hiring organizations comply with any applicable regulations.³¹ The regional legislation in Brussels-Capital states that immersion programs should provide interns with preliminary professional experiences, thereby surmounting any barriers young people face in entering the labor market. The formal requirements of the internship support this objective. For instance, to be classified as immersion internships, programs must last from three to six months and be full-time. While an internship contract must be concluded between the intern, Actiris, and the hiring organization, a support and guidance document must complete the contract, specifying the oversight the intern will receive. The intern must receive a daily stipend of 26,82 euros as well as a monthly salary of 200 euros, and benefit from the employer's insurance.³² If the organization does not follow or comply with the immersion contract, the "plan d'accompagnement," or the insurance requirements, Actiris will end the internship and find the intern a new placement. To this end, the agency requires the intern to fill out an evaluation form and, on the basis of this document, provides an individualized assessment for the intern going forward.

³¹ 29 SEPTEMBRE 2016. - Arrêté du Gouvernement de la Région de Bruxelles-Capitale relatif au stage de première expérience professionnelle

³² Furthermore, internship candidates must be less than 30 years old, hold a degree, and must have been registered as unemployed with Actiris for at least 78 days.

The specificities of this regulatory framework not only allow the candidate to foresee the nature of the immersion training, but also assists the Belgian government in easing the transition to the formal labor market. The intern who undertakes an informal volunteer position, does not benefit from these material benefits and enjoys little, if any, oversight. In Flanders, figures provided by VDAB indicate that while there is a framework for paid internships,³³ which must be registered with VDAB, only 130 were registered for young people under 25 in 2015, increasing to 329 in 2016. Furthermore, young people are rarely aware of the existing framework and requirement of employers to register internships with VDAB.

IV. LEGAL DISCUSSION

A. Article 4 - The right to a fair remuneration

1. Under Article 4 of the European Social Charter, signatory states “recognise the right of workers to a remuneration such as will give them and their families a decent standard of living.” The Committee’s 2010 Statement of Interpretation on Article 4§1 specifies the standard governments should use in determining a “fair remuneration” across national contexts (60% of the net average wage, subject to exceptions. It must also be above the poverty line). However, Belgian law distinguishes between “voluntary” workers and employees, indicating that certain benefits and rights guaranteed to workers, including the 60% threshold, may not apply to those who occupy unpaid positions.

Unpaid interns in Belgium qualify as “workers” within the meaning of the Charter and thus possess a right to a decent wage.

1. Though recent committee decisions do not provide an explicit definition of “worker,” they do imply that “unpaid interns” would come under that category. For example, in 2012 the Social Committee found that the labor situation in Austria did not comply with the Charter, because a collective bargaining agreement applied an insufficient wage for full-time workers. Here the gross monthly wage specified in the collective bargaining agreement (1200 to 1400 Euros) fell below the Charter’s standard of 60% of the net national average wage. In its reasoning, the Committee recognized and approved the test applied by the Austrian courts. The test evaluated a wage for fairness by evaluating “comparable activities” such as wages in neighboring towns, the size of the company-employer, and the number of workers the company employs. In other words, the Committee found that Austria was not in conformity on the ground that a specific group of laborers performed work “comparable” to that undertaken by similarly situated groups receiving a higher wage. The Committee thus implied that below-standard remuneration for work meriting higher compensation, even established in a freely-undertaken collective agreement, would not withstand scrutiny under the 60% threshold. Following this line of reasoning, the Court should look at the quality and nature of work undertaken by Belgian interns, to determine whether it should be evaluated under this standard.

³³ <https://www.vdab.be/werkgevers/beroepsinlevingsovereenkomst>

2. Furthermore, the Committee referenced its Statement of Interpretation to support its reasoning: “Article 4§1 guarantees the right to a fair remuneration such as to ensure a decent standard of living. The concept of ‘decent standard of living’ goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.”³⁴ In sum, the Committee has decided that fair wages are to be determined by referencing applicable remuneration for comparable work, the ultimate objective being to guarantee young people an above-average standard of living. It is thus clear that unpaid interns should be treated as “workers” within the meaning of the Charter.
3. Other decisions echo these same principles. In a 2014 decision, the Committee found that Ireland was not in conformity with the Charter because it could not establish that the Irish government did not compensate employees for overtime work (though this is a guarantee for all workers under the Charter. The Committee was careful to point out that, under Article 4, granting leave is a permissible form of remuneration for overtime work, but, in such cases, leave must be longer than overtime worked. Exceptions only apply to state employees and management executives, not entry-level workers in non-governmental organizations.³⁵ If the Committee has previously established the right to overtime pay for work not formally contemplated by a contract (including intern work for hours over the regular internship constraints), it would follow that interns performing standard work have a right to remuneration.³⁶ The Committee’s November 21 decision, *Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000*, on the merits of 16 November 2001, §45, finding that exceptions to the overtime reimbursement rule should be limited, highlights the overarching policy favoring remuneration.³⁷ That is, if the Committee is scrupulous about compensating employees for the work they undertake outside contractually mandated working hours, on the basis of fair remuneration principles, it should understand the implications for voluntary internships.
4. Many unpaid interns in Belgium are performing work of a similar nature to that at issue in the French and Irish decisions. While this work is normally remunerated at a decent wage rate, a high percentage of interns do not receive compensation because they lack the legal formalities, or happen to be young novices new to the job market. The inconsistency is patent. Applying the same fair wage principle to interns would be logically consistent with the other fundamental rights guaranteed in the charter, such as the right to social security, vocational guidance, the right to work, and the right to fair working conditions. This constellation of rights permits states to achieve the objectives articulated in the preamble of the Charter, namely “to secure to their populations the social rights specified therein in order to improve their standard of living and their social well-being.”³⁸ In the absence of a regime of fair remuneration that adheres to Article 4 standards, Belgian youth are

³⁴ Conclusions 2010, Statement of Interpretation on Article 4§1.

³⁵ Conclusions X-2 (1991), Ireland.

³⁶ See also Lithuania 2016 (4-2).

³⁷ *Confédération Française de l’Encadrement CFE-CGC v. France, Complaint No. 9/2000* on the (November 16, 2001).

³⁸ European Social Charter (revised), May 3, 1996, 163 E.T.S. available at <http://www.conventions.coe.int/Treaty/en/Treaties/Html/163.htm>

effectively precluded from achieving a decent standard of living, and thus from effectively exercising their rights.

Unpaid internships are detrimental to youth mobility and the exercise of the right to work

1. A February 2009 decision by the International Labor Organization's Administrative tribunal (Judgment No. 2797), provides some clarity in this regard. Here, the complainant, who worked for ILO's Madrid office and brought an action for wrongful dismissal, adopted similar arguments to contend that his unpaid internship (2000-2001) and external collaboration contracts should be replaced by fixed term contracts. More specifically, he claimed that "the Organization violated Circular No. 630, series 6, on inappropriate use of employment contracts in the Office, in that "external collaboration' contractual arrangements" were used "for a purpose other than that for which they were designed, for a lengthy period of over four years," which gave rise to a situation of "precarious employment."³⁹ In sum, he claimed to have performed tasks typically reserved for "officials" and thus outside the scope of the terms of the internship as well as his external collaboration contracts. If he performed the same work as officials of the Madrid office even as part of an unpaid engagement, he was a *de facto*, though not a *de jure*, official and should have been appropriately compensated.⁴⁰
2. Though the Social Charter was not applicable, the ILO's Declaration on Fundamental Principles and Rights at Work echoes the Charter's principles. Tellingly, the Complainant noted that the ILO Madrid's office use of an intern and then external collaboration employee to keep up with a heavier workload during the time of the Spanish Presidency of the European Union, violated the right to decent work enshrined in the Declaration. In addition, the complainant continued to work without being paid between two contracts, which recalls in many ways the position of the intern. The nature of the work, a series of temporary contracts, paints less a picture of youth mobility, than uncertainty. To the extent that unpaid interns in Belgium often find themselves performing tasks normally undertaken by entry-level employees, but not legally designated as such, their situation resembles the complainant's. The ambiguity in the Belgian legislation regarding internships suffers from the same defects and produces similarly detrimental results.
3. Here, the mistaken classification of both tasks performed as an unpaid intern not only led to confusion and uncertainty, but also gave rise to significant opportunity costs. Indeed, only after five years did the complainant come to understand the insecurity of his situation, significantly delaying any real professional advancement and depriving him of legal protection in the event any claims would become time-barred. It was due to this delay that the ILO challenged the claims brought against it as inadmissible. Stating in the complaint that "he was in a situation without any legal protection whatsoever" because of the Administrative Tribunal's timing rules, the Complainant

³⁹ International Labor Organization, Administrative Tribunal. 106th Session) (Judgment No. 2797, February 4, 2009).

⁴⁰ ILO, Judgment No. 2797, p. 3.

initiated parallel proceedings in the Spanish courts.⁴¹ It is interesting to note that the Tribunal agreed to hear the Complainant, reasoning that the inadmissibility of the complaint was related to the merits. It was thus clear that the ambiguity surrounding his legal status as an intern or employee for the ILO affected his ability to bring his grievance before the Tribunal. Similarly, unpaid interns are put at a disadvantage when they undertake unpaid work for extended periods of time without resources and ignorant of their status.

State implementation of the Charter

1. The Charter further stipulates that states party to the agreement may use means “appropriate to national conditions” to “achieve the exercise of this right.”⁴² This language implies that governments may tailor efforts to comply with the Charter provisions to their domestic circumstances. For example, the government of Belgium may invoke several factors that make the promotion of unpaid voluntary internships a pragmatic policy choice: the recent financial crisis, the costs of labor on Belgian companies and organizations, the encouragement of youth entry into the workplace, which employers might be unable to shoulder if certain wage or labor standards applied, etc. Just as the costs of violating Article 4, including negatively affecting the wellbeing of Belgian youth and the vitality of the Belgian labor market, outweigh any benefits of unpaid internships.

Inadequate remuneration is unfair

1. In *GENOP-DEI ADEDY c. Grèce*, the Committee found that wages below a national poverty line are unfair within the meaning of the Charter. The case centered around a lowering of the minimum wage by 32%, a measure which the Greek government had pursued to stimulate employment in the wake of the 2008 financial crisis.⁴³ Normally European governments may apply within reason different minimum wage requirements to young workers, owing to their temporary status and inexperience. Yet in the Greek case this otherwise legal reduction in the rate would have placed young people’s wages below the poverty level, in violation of the Charter.⁴⁴
2. The Committee employed the same reasoning in two 2014 decisions and more clearly delineated the factors it considers when assessing wages for fairness. Applying the *GENOPI* proportionality test, the Committee found that a reduced statutory wage applied to workers 18-22 years old in Netherlands was not in conformity with Article 4.⁴⁵ It dismissed the Dutch government’s position that low wages “purport to foster young persons’ choice to qualify further,” and that “reflect young workers’ reduced productivity and increased need for supervision.”⁴⁶ The Committee furthermore noted that differentiated wage rates contravened the principle of equal remuneration for work of equal

⁴¹ ILO, Judgment No. 2797, p. 6.

⁴² European Social Charter (revised), May 3, 1996.

⁴³ Ministerial Council Act “Act 6 of 28-2-2012.; “...Application of article 1§6 of Law No 4046/2012”, article 1§1 stipulates that “from 14-2-2012 onwards, the minimum wage and daily wage set by the National General Labour Collective Agreement...”

⁴⁴ “Reduction of wages for young people in temporary positions is permissible, but it cannot fall below the poverty level.”

⁴⁵ Conclusions. The Netherlands-Article 4-1 (2014).

⁴⁶ Conclusions. The Netherlands-Article 4-1 (2014).

value, dismissing “stereotypical ideas about youth and low productivity.” (ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), (Convention No. 131 on Minimum Wage Fixing (1970) Observation, adopted in 2012, published at the 102nd ILC session (2013)). It is thus clear that any contention that lack of remuneration is appropriate for young interns due to their inexperience should not stand scrutiny under Article 4 of the Charter.

3. In the Dutch case, the Committee also looked to whether holiday allowances and other benefits could, in conjunction with a reduced wage, still ensure a decent standard of living or permit participation in social, cultural, and educational activities. This indicates that the Committee does not exclusively rely on the 60% minimum threshold test in assessing a wage for fairness, but will also look to the broader objectives of the Social Charter. The case of unremunerated interns in Belgium is a simple one: lacking even the nominal wages that the Committee found to be unfair in the 2014 Dutch decision, these young workers cannot feasibly attain a decent standard of living and thus meaningfully participate in their communities.⁴⁷
4. In the same year, the Committee issued a nonconformity decision regarding unfair wages applicable to Belgian workers under the age of 21, which had been determined by certain Collective Labour Agreements. It thus cited an Interprofessional Collective Agreement which specified a gross monthly average minimum wage of €1.501,82 for a worker having reached the age of 21; €1.541,67 for a worker aged 21 and a half with six months of service; and €1.559,38 for a worker aged 22 with 12 months of service. Because the minimum average wages imposed by a certain collective agreement did not satisfy the minimum threshold test, the Committee found that the wages were unfair within the meaning of Article 4. Just as in the Dutch decision, the Committee reiterated the second prong of the fairness test--whether or not the reduced wage, though falling below the minimum threshold wage nevertheless was “sufficient enough to ensure a decent standard of living.”
5. Despite the possible provision of housing allowances and support for training measures for workers it is important to note that the Committee found Belgium and the Netherlands to not be in conformity with Article 4 even though these workers received a wage. Voluntary interns, on the other hand, do not receive any remuneration. In passing, the Committee noted that certain temporary, or “atypical” positions were not covered even under these deficient collective agreements (“some atypical jobs are not covered by Interprofessional Collective Agreement No. 43: student jobs; employment experience jobs; socio-professional integration jobs; “beroepsinlevingsovereenkomst”; and work/study jobs).⁴⁸ Appropriately, however, it requested wage levels for workers employed in these positions. Unpaid internships resemble such “atypical jobs” and should thus draw the Committee’s attention is a similar

⁴⁷ The Committee thus dismissed the Dutch provision of a holiday allowance to young workers as insufficient, reasoning that “the information on available supplements and benefits provided in the report does not establish that the statutory minimum wage ensures a decent standard of living within the meaning of Article 4 of the Charter.”

⁴⁸ “Defined by the French Community Decree of 5 March 2009 approving the framework co-operation agreement on work/study programmes, concluded in Brussels on 24 October 2008 between the French Community, the Walloon Region and the French Community Commission.”

way. Because unpaid internships are unaccounted for in Belgian legislation, young people undertaking them go unaccounted for. These decisions indicate that minimum wages failing a quantitative threshold will not stand legal scrutiny under the Social Charter. It goes without saying that the lack of any wage puts young people in an even more precarious and uncertain position. The Committee should thus find that signatory states violate their commitments under the Charter by allowing the frequent practice of unpaid internships.

The discriminatory nature of unpaid internships

1. Unpaid voluntary internships may also raise a presumption of discrimination. This is consistent with the Committee's reasoning in *GENOP*.⁴⁹ There, the Committee interpreted Article 4§1 in light of the 1961 Preamble's anti-discrimination clause, which reads: "[...] Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, color, sex, religion, political opinion, national extraction or social origin; [...]"⁵⁰
2. In *GENOPI*, the complainant Greek trade unions contended both direct and indirect discrimination, reading Article 4 in conjunction with the Committee's interpretation of Article 1. By signing the Charter, states undertake to ensure citizens both the right to a fair wage and the right to work. Discrimination can include the failure to take into account differences in circumstances or characteristics that may hinder the effective exercise of these rights. (see judgment of 17 July 1963, Case 13-63, *Italian Republic v Commission of the European Economic Community*, CJEC 1963, p.335; judgment of 6 April 2000, *Thlimmenos v. Greece*, no. 3469/97, ECHR 2000-IV, §44).
3. The Unions thus argued that the Greek government "failed to take due and positive account of all relevant differences" by applying the same exceptional apprenticeship regime to all young workers (see *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52). The exceptional regime for apprenticeship contracts exempts employers hiring workers under the age of 25 from Greek labor laws without regard to personal circumstances. The Committee thus found discrimination.
4. While the Committee acknowledged the Greek government's efforts to stimulate youth employment by depressing wages and minimizing the cost of labor, it rejected the notion that extenuating circumstances could release signatories from their obligations under the Charter. In its 2009 Conclusions XIX-2 on the economic crisis and social rights, the Committee noted that while the "increasing level of unemployment is presenting a challenge to social security and social assistance systems as the number of beneficiaries increase while tax and social security contribution revenues decline," by acceding to the 1961 Charter, the Parties "have accepted to pursue by all appropriate means the attainment of conditions in which inter alia the right to health, the right to social security, the right to social and medical assistance and the right to benefit from social welfare services may be effectively

⁴⁹ Fédération générale des employés des compagnies publiques d'électricité (*GENOP-DEI*) et Confédération des syndicats des fonctionnaires publics (*ADEDY*) c. Grèce (*Réclamation n 66/2011*) [hereinafter *GENOP-DEI*].

⁵⁰ European Social Charter, Oct. 18, 1961, Preamble, available at <http://www.conventions.coe.int/Treaty/en/Treaties/Html/035.htm>.

realised.”⁵¹ On these same grounds, the Committee dismissed the government’s argument that lower wages encouraged employers to hire younger workers who would otherwise have difficulty finding jobs. It also dismissed the government’s justification that younger workers “incur lower expenditure on average than other categories of workers when it comes to housing, family support and other living costs.” More specifically, the government applied a strict proportionality test, under which a discriminatory wage practice must further “a legitimate aim of employment policy” and be proportionate to the objective of economic stimulus to be permissible. While the Committee agreed that the integration of younger workers into the post-2008 job market was legitimate, it found that the dramatic wage reduction, applied strictly to workers under the age of 25, overstepped the government’s prerogative.

5. In reaching its conclusion, the Committee cited a statement issued by the Greek National Commission for Human Rights. The latter voiced “deep concern...about the lack of prospects for the young, who are either unemployed or employed under detrimental and precarious conditions.”⁵² This often-cited issue of precariousness, echoing the grievances of the ILO worker cited above, attests to the perilous and uncertain existence young, unremunerated interns face in today’s labor market.
6. By denying young people the right to fair wages while guaranteeing this right to other groups or categories of workers, the Government of Belgium may be discriminating on the basis of age or another category. The European Youth Forum believes that the Committee’s decision to reject the Greek government’s defense is sound and should apply in the Belgian context. Austerity measures, though legitimately aimed at reducing the cost of labor, cannot proceed on discriminatory grounds to infringe on the fundamental rights of youth in Europe.

B. Article 7 - The right of children and young persons to protection

1. Article 7 of the Social Charter provides that: “With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake: [...] 5. to recognize the right of young workers and apprentices to a fair wage or other appropriate allowances.” Essentially, Paragraph 5 provides for the protection of young people from exploitative employment situations that deprive them of remuneration or fair benefits. Unpaid internships in Belgium for those not receiving academic credit do not meet this standard.
2. The Committee recently analyzed Article 7§5 conformity in Belgium for young people in apprenticeships in 2011,⁵³ taking into account family allowances payable to apprentices up to the age of 25. The implication is that Article 7§5 protects not only young people under the age of 18 but also young people such as those undertaking unpaid internships. In that decision, the Committee concluded that monthly allowances paid to apprentices under various Belgian

⁵¹ GENOP-DEI, 5.

⁵² GENOP-DEI, 5, 8 December 2011.

⁵³ [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["07-05-000"\],"ESCDclIdentifier":\["2011/def/BEL/7/5/EN"\]}](http://hudoc.esc.coe.int/eng#{)

legislation were inadequate and thus not in conformity with Article 7§5 of the Charter, noting “vocational training is the responsibility of Belgium’s federated entities.”⁵⁴ Additionally, the participation rate in higher education among young people in Europe has increased significantly since 1961, when the European Social Charter was drafted, supporting the notion that Article 7§5 should be interpreted to apply to young people above the age of 18. The OECD reported that Belgium was among the countries with the lowest rate of attainment of upper secondary education 50 years ago, but that rate has increased significantly (about 50%) since then.⁵⁵ Other EU countries, including France, Greece, Hungary, and Spain have followed a similar trajectory. Because young people now start working full-time at a much later age than they did half a century ago, the protections for them envisioned by Article 7 should be extended to those over the age of 18.

3. In Belgium, the minimum wage for gainfully employed people is determined by the National Labour Council and laid down in collective agreements. This minimum wage is scaled lower for workers under the age of 22. The Committee has concluded that apprentices must be granted an allowance that must equal at least one third of the adult minimum or starting wage at the beginning of the apprenticeship and at least two thirds at the end.⁵⁶ Allowances paid to apprentices can be below an adult’s starting or minimum wage because apprenticeships are meant to impart valuable skills onto the young people who undertake them. Yet many unpaid internships impart little to no skills, requiring only the completion of tedious chores for the exclusive benefit of the organization, all while paying nothing to interns. If paid apprenticeships can be found to be in violation of Article 7§5, then so should the practice of non-academic unpaid internships.
4. Unpaid internships directly contravene the protections for young workers envisioned by the Social Charter by denying young persons their right to “a fair wage or other appropriate allowances.” Small stipends and reimbursements are unfair compensation for the work performed by young people in unpaid internships. And when such internships become so commonplace that they become a per se necessary step in the process to gaining full-time paid employment, they should no longer be considered volunteer work.
5. The entrenchment of unpaid internships in Belgium creates the risks of serious consequences to not only the young people in internships positions directly affected but also the wider economy. The widespread practice of voluntary internships inhibits social mobility in Belgium because they are a disproportionately bigger burden on young people from lower socioeconomic classes. Taking on unpaid internships often requires poorer students to take on part-time work or additional loans.⁵⁷ Those who are unable to secure full-time paid employment after completion of their internships are burdened by the cascading effects of a large debt load. Meanwhile, more privileged young people from higher socioeconomic classes are free to take on unpaid

⁵⁴ *Id.*

⁵⁵ <https://www.oecd.org/education/skills-beyond-school/48642586.pdf>

⁵⁶ *Id.*

⁵⁷ Jessica L. Curiale, Note, America’s New Glass Ceiling: Unpaid Internships, the Fair Labor Standards Act, and the Urgent Need for Change, 61 *Hastings L.J.* 1531, 1551–60 (2010).

internships, allowing them to gain an upper hand over their less privileged peers.⁵⁸ Additionally, the availability of unpaid internships may indirectly contribute to unemployment by displacing adult wage earners with young interns.⁵⁹

6. The Committee came to its conclusion on apprenticeships in Belgium even while noting the objection that an increase in minimum allowances would make it impossible to find employers willing to take on young people as apprentices.⁶⁰ Similarly, it should reject assertions that requiring pay for internships will make organizations unwilling to hire young people as interns. The possibility that unpaid internships may have some value for young people as a tool for career-building does not preclude the fact that they perpetuate inequality by only being accessible to those who can afford to undertake them. On a larger scale, the possibility that some internships may be lost if unpaid internships for non-college students are banned is a price worth the reward of decreasing social inequality. In any case, the impact is likely to not be severe. Those hiring for entry-level positions will simply have to shift their metrics for evaluating the qualifications of candidates. Organizations may have to innovate to do so, but they will find themselves rewarded with a more diverse employee pool.
7. The fact that unpaid internships have become de facto requirements for gaining full-time employment and their role in entrenching inequality by impeding social mobility makes it clear that such internships are not in compliance with Article 7§5 of the Social Charter.

V. CONCLUSION

The practice of unpaid internships, which Belgium has failed to appropriately regulate, puts many young people in a difficult position. With the importance of obtaining foundational professional experiences, young people cannot afford to forgo internships, and yet many cannot afford to do them, either. This in turn results in discrimination against young people who have no external financial support that would enable them to work for free, hindering their social mobility.

The situation in Belgium violates the European Social Charter's provision for fair remuneration and the protection of young people.

Thank you for your consideration of the above matters. On behalf of the European Youth Forum,



Allan Päll
Secretary General

⁵⁸ Steven Greenhouse, The Unpaid Intern, Legal or Not, N.Y. Times, Apr. 2, 2010, available at <http://www.nytimes.com/2010/04/03/business/03intern.html>.

⁵⁹ Curiale, supra note 16, at 1534.

⁶⁰ [http://hudoc.esc.coe.int/eng#{"ESCArticle":\["07-05-000"\],"ESCDcIdentifier":\["2011/def/BEL/7/5/EN"\]}](http://hudoc.esc.coe.int/eng#{)